

REMARKS

In the Restriction Requirement dated September 28, 2006, the Examiner has restricted the claims to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-12, drawn to a refractive index detector, classified in class 356, subclass 128.
- II. Claims 13-25, drawn to a refractive index sensor system, classified in class 356, subclass 128.
- III. Claims 42-46, drawn to a refractive index sensor system, classified in class 422, subclass 82.05.
- IV. Claims 35-41, drawn to a method of using a sensor to detect an analyte, classified in class 436, subclass 164.

Applicant elects, with traverse, Group I including claims 1-12. Applicant offers to cancel claims 13-41 without prejudice or disclaimer, upon receipt of an indication of allowability. Applicant reserves the right to reintroduce any cancelled claims in one or more divisional applications at a later date.

Applicant respectfully traverses the restriction requirement and submits that the Examiner has not satisfied the requirements for a proper *prima facie* restriction requirement as noted herein.

The application was originally filed with claims 1-50. A restriction requirement dated March 29, 2004 identified Group 1 (claims 1-25 and 35-50) and Group II (claims 26-34). Applicant filed a response dated April 16, 2004 in which the claims of Group I were elected.

The file history for this application since April 16, 2004 includes a non-final office action dated June 25, 2004, a final office action dated March 8, 2005, a non-final office action dated October 28, 2005, and a non-final office action dated April 18, 2006.

The instant restriction requirement represents yet a further restriction of a portion of original Group I claims.

RESPONSE TO RESTRICTION REQUIREMENT

Serial Number: 10/010,939

Filing Date: November 7, 2001

Title: NANOFABRICATED PHOTON TUNNELING BASED SENSOR

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Applicant submits that the instant restriction is improper since it is believed that a search and examination of all pending claims does not impose a serious burden on the Examiner. As evidence, Applicant notes that on at least four occasions (corresponding to the four enumerated office actions), the Examiner has taken action that cannot now be described as presenting a serious burden.

Applicant requests clarification of the status of claims 47-50. To the extent that such claims are not the subject of an outstanding rejection or restriction requirement, Applicant requests a notice of allowance.

Reconsideration and withdrawal of the restriction requirement is respectfully requested.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6911 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date October 30, 2006

By David W. Black

David W. Black

Reg. No. 42,331

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 30th day of October 2006.

Name

Dawn M. Bate

Signature

Dawn M. Bate